

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

APPEAL FROM ORDER NO.910 OF 2004

IN

SPECIAL CIVIL SUIT NO.126 OF 2004

Dattatraya P. Gaikwad).. Appellant

Versus

Prakash M. Karmarkar and others).. Respondents

Dr.V.V.Tulzapurkar with Mr.V.P.Sawant for the
Appellant.

Mr.N.P.Deshpande for the Respondents.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 1ST NOVEMBER 2004

P.C.:

. This Appeal From Order challenges the order of the trial Court refusing to grant the reliefs to the Appellant-Plaintiff. A Memorandum of Undertaking was entered into between the Plaintiff and the Defendants on 19th December 2002 under which the parties agreed to enter into an agreement of sale of the property owned by the Defendants provided certain stipulations and conditions contained in the Memorandum of Undertaking were fulfilled. Under the Memorandum of Agreement, certain amounts were to be paid by the Plaintiff, on the Defendants obtaining a clear title. One of the recitals of the Memorandum of Undertaking clearly stated that the

document could not be considered to be an agreement of sale. The Memorandum of Agreement was to be valid upto 31st January 2003.

2. The learned Counsel for the Appellant submits that it was only because the title had not been cleared by the Defendants that the agreement was not concluded. He submits that under the Memorandum of Agreement, the Appellant had parted with a large sum of money to the Respondents. He urges that the Appellant had agreed to make full payment within a stipulated period on the basis of the representation of Respondent No.1 that the title of the suit property was free, clear and marketable.

3. The trial Court has considered the fact that there was no concluded contract between the parties and, therefore, no injunction could be granted. The trial Court has not committed any error by refusing to grant any interim relief, since the document which is the basis of filing the Suit is prima facie inchoate. Hence, Appeal From Order rejected.

4. In view of the rejection of the Appeal From Order, nothing survives in Civil Application No.1245 of 2004 and the same is disposed of accordingly.